

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
TIFFANY AND COMPANY and
TIFFANY (NJ) LLC, :

Plaintiffs and Counter-Defendants, :

- against - :

COSTCO WHOLESALE CORPORATION, :

Defendant and Counter-Plaintiff. :

ECF Case

13 Civ. 1041 (LTS)

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DECLARATION OF ROBERT NEWELL

1. My name is Robert Newell. My business address is Costco Wholesale Corporation 999 Lake Drive, Issaquah, Washington 98027. I am a gemologist by training. I attended the Gemological Institute of America (GIA) in Carlsbad, California and received a GIA Gemologist Diploma in 1997. As part of my GIA study and training, I purchased and, to this day, still own a copy of *The GIA Diamond Dictionary* (3d ed. 1993). Annexed hereto as Exhibit 1 are excerpts from my personal copy of *The GIA Diamond Dictionary*.

2. Between 1997 and 2012, I held retail sales positions with a number of operators of retail jewelry stores including Ben Bridge, E.E. Robbins, and Panowicz Jewelers. During this period I had countless interactions with retail customers looking to buy diamond engagement rings. Retail customers regularly told me that they wanted a “Tiffany solitaire” or a ring with a “Tiffany setting”; and I regularly referred to simple, solitaire diamond rings as Tiffany solitaires or rings with Tiffany settings. In these interactions with retail customers, the terms Tiffany solitaire and Tiffany setting were used in their dictionary definition sense to refer a type or style of ring setting, not to a company or manufacturer. The jewelry stores I worked at between 1997

and 2012 either made the rings they sold themselves, using gemstones and setting parts sourced separately, or purchased finished rings from wholesale vendors. None of the jewelry stores I worked for ever purported to sell rings manufactured by Tiffany & Co. or used the word TIFFANY as a brand or company name.

3. Annexed hereto as Exhibit 2 is a copy of a Panowicz Jewelers display advertisement that I viewed on May 2, 2013. The advertisement in Exhibit 2 was displayed following a query for the term "Tiffany Settings." As I read and understand the advertisement in Exhibit 2, it uses the term "TIFFANY SETTINGS" in the dictionary definition sense given in the GIA Diamond Dictionary (see Exhibit 1) and describes the type of settings that rings displayed in Exhibit 2 actually have. I can also see that the rings displayed in Exhibit 2 do not appear to bear any manufacturer's brand name engraved or inscribed on their inner band surfaces.

4. The use of "TIFFANY SETTINGS" in Exhibit 2 is exemplary of the descriptive way in which that term was used on a routine regular basis in my interactions with retail jewelry store customers between 1997 and 2012. In the context of an advertisement like Exhibit 2, the word Tiffany refers to a type or style of pronged setting, not a manufacturer or supplier of jewelry.

I, ROBERT NEWELL, hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: May 3, 2013

A handwritten signature in black ink, appearing to read "Robert Newell", is written over a horizontal line.